STATE OF MICHIGAN

COURT OF APPEALS

BRANDON MAIER, MATTHEW EVANS, JOSHUA ROEPKE, STEVEN MORRIS, GREGORY N. SHELDON, SHAWN BYRNES, TANNER TACEY, ANDREW OUILETTE and ALL OTHERS SIMILARLY SITUATED, Plaintiffs-Appellees,	UNPUBLISHED March 16, 2006
v	No. 257958 Ingham Circuit Court
COMMUNITY RESOURCE MANAGEMENT COMPANY, Defendant-Appellant.	LC No. 02-001704-CH

Before: Smolenski, P.J., Whitbeck, C.J., and O'Connell, J.

PER CURIAM.

Defendant Community Resource Management Company (CRMC) appeals by leave granted from the trial court's order granting plaintiffs' motion for class action certification. We reverse and remand for proceedings consistent with this opinion.

I. Basic Facts And Procedural History

Plaintiffs are former lessees of an East Lansing house, which CRMC purchased during the term of plaintiffs' lease. Plaintiffs brought this suit on behalf of themselves and others similarly situated alleging that CRMC violated the Michigan Consumer Protection Act (MCPA),[1] and the Landlord Tenant Relationship Act (LTRA),[2] by deducting charges from their security deposit for (1) certain tasks such as painting and large item removal, and (2) for repairs in amounts in excess of which similar services cost. The trial court granted plaintiffs' motion for class action certification. The certified class

[1] MCL 445.901 *et seq*.

[2] MCL 554.601 *et seq*.

consists of all tenants of [CRMC] from six years prior to the date the Complaint was filed, or from the date of incorporation of [CRMC], whichever is less, to the present. Excluded from the Class are prior tenants who have either

a. been involved in prior litigation over their security deposit with [CRMC], or

b. have expressly waived their rights to further claims against [CRMC] through a written instrument.

II. Class Action Certification

A. Standard Of Review

We review for clear error a trial court's ruling on a motion for class action certification.[3] A trial court's findings of fact are clearly erroneous only if we are "left with a definite and firm conviction that a mistake has been made."[4]

B. MCR 3.501(A)(1)

MCR 3.501(A)(1) sets forth the requirements for class action certification and states as follows:

> One or more members of a class may sue or be sued as representative parties on behalf of all members in a class action only if:
>
> (a) the class is so numerous that joinder of all members is impracticable;
>
> (b) there are questions of law or fact common to the members of the class that predominate over questions affecting only individual members;
>
> (c) the claims or defenses of the representative parties are typical of the claims or defenses of the class;
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> (d) the representative parties will fairly and adequately assert and protect the interests of the class; and
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> (e) the maintenance of the action as a class action will be superior to other available methods of adjudication in promoting the convenient administration of justice.[5]

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[3] *Zine v Chrysler Corp*, 236 Mich App 261, 270; 600 NW2d 384 (1999).

[4] *Id.*

[5] MCR 3.501(A)(1).

Applying MCR 3.501(A)(1) to the present case, we conclude that the trial court clearly erred by finding that this case met all of the requirements for class action certification. First, we note that the question of commonality looks to "whether there 'is a common issue the resolution of which will advance the litigation.'"[6] It further requires that the issues addressed by the class action litigation will be subject to generalized proof, although "there 'is no requirement in the rule that all questions necessary for ultimate resolution be common to members of the class.'"[7]

In this case, while a determination of whether the painting charges and the charges for large item and trash removal violate the LTRA and the MCPA would arguably be subject to generalized proof with questions common to the class predominating, a determination whether any repair charges were so excessive as to violate the LTRA and the MCPA would require an individualized determination in each instance because the damage done to each property and the associated charges vary from tenancy to tenancy. Thus, questions of fact affecting individual members of the class will clearly predominate over questions common to the class. Accordingly, we are left with a definite and firm conclusion that a mistake was made, and the trial court clearly erred in granting class action certification.

We also conclude that the trial court clearly erred in finding that plaintiffs met the requirement of typicality. Again, the determination of whether some tenants were charged excessive amounts for repairs would depend on an individual assessment of the damage done to each property and the costs for similar repairs. These are individualized factors that would depend on the property in question. Thus, we conclude, "there are simply too many different factual circumstances involved in these claims to show that the claims presented by the class representatives are typical of the claims of the remaining members of the class."[8] Accordingly, we are left with a definite and firm conclusion that a mistake was made, and the trial court clearly erred in granting class action certification on this ground.

On the same basis, we further conclude that the trial court clearly erred in finding that maintenance of this case as a class action would be superior to other available methods of adjudication. The determination of which tenants were charged for repairs, the amount of those charges, and why the charges were or were not excessive in each instance would require detailed proofs concerning each tenancy. Because of "the highly individualized nature of the claims alleged in this case . . . the issues involved are so disparate as to make the case unmanageable as a class action."[9] Accordingly, we conclude that individual suits will better promote the convenient administration of justice.

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[6] *Zine*, *supra* at 289, quoting *Sprague v Gen Motors Corp*, 133 F3d 388, 397 (CA 6, 1998).

[7] *A & M Supply Co v Microsoft Corp*, 252 Mich App 580, 599; 654 NW2d 572 (2002).

[8] *Neal v James*, 252 Mich App 12, 22; 651 NW2d 181 (2002).

[9] *Id*. at 23.

C. Timeliness Of Motion

Because our determination that this case does not meet the requirements for class action certification is dispositive, we decline to address CRMC's remaining argument concerning the timeliness of plaintiffs' motion for class action certification.

D. Authorized Conduct

CRMC has also asserted on appeal that plaintiffs are not entitled to the relief they seek because the MCPA does not apply to transactions or conduct "specifically authorized under laws administered by a regulatory board or officer acting under statutory authority of this state or the United States."[10] CRMC argues that because it is a licensed real estate broker engaged in property management and leasing pursuant to MCL 339.2501 *et seq*., its conduct at issue here was specifically authorized. However, our grant of leave was limited to the issues raised in the application. This issue was not raised in CRMC's application for leave to appeal, and, therefore, is not properly before this Court. In addition, this issue was not addressed by CRMC's statement of questions presented, a fact that also precludes review.[11]

We reverse and remand for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ William C. Whitbeck
/s/ Peter D. O'Connell

I concur in result only.

/s/ Michael R. Smolenski

[10] MCL 445.904(1)(a).

[11] *Caldwell v Chapman*, 240 Mich App 124, 132; 610 NW2d 264 (2000).